

**VIII. Suggested Changes in Form 854**

**A. Actual Structure Owners versus Appointed Owners**

As noted above, although "Owner" is defined in proposed Section 17.2(d) to encompass either the owner of the structure or an entity designated by the owner to maintain the structure, Form 854 does not provide for this latter possibility. An entity authorized to act in the true owner's stead as an owner for purposes of Part 17 would be continually representing itself as the owner of the structure when filling out Form 854. Even though this would technically be true under the proposed definition, it is strongly counterintuitive and would almost certainly lead to confusion. Form 854 should be modified to account specifically for the possibility, if not likelihood, that appointed entities rather than actual owners will be making many of the filings.

**B. Drug Certification Addendum**

Proposed Form 854 includes a drug certification addendum. If the FCC is merely proposing the registration of sites, as it appears to be doing, there is no need for a drug certification.

Under the Anti-Drug Abuse Act of 1988, codified at 21 U.S.C. § 862, the Commission may not grant a federal "benefit" to an entity which has been denied those benefits as a result of certain drug activity. The Commission has interpreted that mandate to be limited to the granting of authorizations. Amendment of Part 1 of the Commission Rules

to Implement Section 5301 of the Anti-Drug Abuse Act of 1988,  
6 F.C.C.R. 7551, 7553 (1991). The Commission has also recognized that many submissions made to the Commission do not seek a benefit but are merely required for informational or other purposes (e.g., Licensee Qualification Reports). Such reports and filings do not require a drug certification because no benefit is conferred. Since here the Commission is merely registering a site--not issuing an authorization or otherwise conferring a benefit--there is no reason for the certification to be included on the Form or required of registrants.<sup>10</sup>

The reach of the proposed rules would be very broad, capturing many structure owners who have had no prior dealings with the FCC and who are otherwise unregulated by it. As Commission licensees have learned, the drug abuse certification is highly invasive in its effect. The person certifying must often make inquiry as to the drug conviction status of numerous officers, directors and stockholders up and down a corporate chain in order to comply in good faith with the rule's requirement.

While such inquiries may be tolerated in the context of an applicant or licensee who actually is getting a benefit from the FCC, such personal invasion and effort is likely to be met with considerable hostility by structure owners who are

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<sup>10</sup> This is equally true of current Form 854, which includes a drug certification clause.

not Commission licensees. From the standpoint of a licensee or applicant who will often, in a practical sense, have to lead the structure owner through the registration process, this requirement could have the effect of diminishing the availability of transmitter sites for communications purposes when owners refuse to survey a broad range of management about their drug activities. The inclusion of the drug certification rule may also serve to reduce overall voluntary compliance with the registration program--a result which would be disastrous in a system which must rely heavily on voluntary compliance.

A further difficulty with drug certification addendum to proposed Form 854 is that it does not make clear whether certification is being made on behalf of the structure owner, the structure owner's appointed entity, or both. If the addendum is adopted, it should specify on whose behalf certification must be made.

#### **IX. Proposed Registration Procedure and the Commission's Environmental Rules**

The Commission's environmental rules were designed to ensure compliance with the National Environmental Policy Act ("NEPA"), and the National Historic Preservation Act ("the NHPA"). NEPA applies when a "major federal action" is involved, i.e., activities that are "potentially subject to federal control and responsibility" which may include the issuance of federal permits to third parties. 40 C.F.R.

§ 1508.18. The NHPA governs "undertakings," which include "any project, activity, or program that can result in changes of character or use of historic properties . . . . The activity . . . must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency." 36 C.F.R. § 800.2(0). Under the FCC's rules, facilities that may have a significant environmental effect include Commission actions with respect to antenna towers and supporting structures equipped with high intensity lights that are to be located in residential neighborhoods. 47 C.F.R. § 1.1307(a)(8).

Currently, structure owners that are not Commission licensees are not required to register with the Commission, and are not required to comply with the Commission's rules regarding the lighting and painting of towers in accordance with FAA standards. The NPRM's proposal to require structure registration by owners and compliance with FAA painting and lighting requirements, however, would make structure owners responsible for complying with NEPA and the NHPA.

The proposed rules to require structure owners to register their antenna structures with the FCC and to comply with FAA lighting and painting standards rises to the level of "federal action" under NEPA and an "undertaking" under the NHPA. Although mere registration might not invoke either NEPA or the NHPA, requiring antenna structure owners to light and paint their towers after registering with a federal agency is,

in essence, requiring such owners to take action pursuant to federal law--which raises the activity to the level of a "federal action."

GTE does not believe that the Commission's environmental rules require revision, because the current environmental rules already encompass the activities required by Part 17. However, Form 854 and the notice to structure owners should refer to the Commission's environmental rules as set forth in Part 1, Subpart I, to ensure compliance with NEPA and the NHPA.

#### **X. Voluntary Lighting**

The NPRM requests comments on proposed Section 17.26, which requires that owners whose structures do not require marking or lighting, but who wish to voluntarily comply, follow the guidelines set forth by Part 17. The rule as proposed is confusing since it would require owners who engage in voluntary lighting to comply with the "requirements" of Part 17. However, Part 17 imposes no requirements on those engaged in voluntary lighting.

GTE also questions the benefits of requiring strict compliance with the FAA's lighting and marking standards when compliance is voluntary. While GTE does not wish to cause confusion to air navigators, it seems that the lighting or marking of structures in some fashion may be better for pilots than no lighting or marking at all. GTE proposes that if any

requirements are imposed on owners who wish to voluntarily light their structures, such requirements should be the absolute minimum necessary to prevent the creation of an air hazard, such as mandating a top-mounted light on all voluntarily lit structures. Such a rule would strike a better balance between encouraging voluntary lighting and marking of towers and preventing the endangerment of pilots due to confusing tower lights.


#### **XI. Conclusion**

The NPRM's goals, which include reducing the number of filings with the Commission, creating a uniform database for antenna structures, and streamlining compliance with the FAA's lighting and marking guidelines, are laudable. Unfortunately, as currently proposed, the antenna structure registration system would cause significant delays in the construction of transmitter sites through a duplicative filing process. GTE is confident, however, that the Commission's goals can be achieved by altering the proposed process to reduce or eliminate duplicative functions.

Respectfully submitted,

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